

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UYVONNE RITTER,

Plaintiff

v.

C-1-12-122

COMMISSIONER OF SOCIAL SECURITY,

Defendant

ORDER

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 18) and plaintiff's objections thereto (doc. no. 19). Plaintiff, a Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) claimant, brought this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of the final decision of the Commissioner of Social Security denying plaintiff's application for DIB and SSI benefits. The Magistrate Judge concluded that there is substantial evidence to support the Commissioner's findings and recommended that the final decision of the Commissioner that plaintiff is not entitled to benefits be affirmed.

I.

Plaintiff filed applications for DIB and SSI in September, 2005. Those applications were denied initially and on reconsideration. Following a hearing, Administrative Law Judge (ALJ), Larry A. Temin, issued a decision on October 1, 2008 finding that plaintiff was not disabled. Plaintiff subsequently filed new applications for DIB and SSI in December 2008, alleging disability since July 15, 2005, due to injuries and associated pain from an automobile accident, fibromyalgia, osteoarthritis, and depression. Plaintiff subsequently amended her disability onset date to December 1, 2008. Plaintiff's applications were denied initially and upon reconsideration. Plaintiff, through counsel, requested and was granted a de novo hearing before ALJ Gregory G. Kenyon. Plaintiff and a vocational expert (VE) appeared and testified at the ALJ hearing. On March 22, 2011, the ALJ issued a decision finding that plaintiff was not disabled. Plaintiff's request for review by the Appeals Council was denied, making the decision of the ALJ the final administrative decision of the Commissioner.

II.

Plaintiff specifically objects to the Report and Recommendation for the following reasons. The Magistrate Judge erred in her determination that the ALJ's failure to consider the opinion expressed by Ms. Ritter's attending physician constituted "harmless error." The Magistrate Judge erred in accepting the ALJ's application of the *Drummond* Acquiescence Ruling; and the Magistrate Judge also erred in accepting the ALJ's hypothetical question to the vocational expert.

III.

Judicial review of the Commissioner's decision is limited in scope by 42 U.S.C. § 405(g). The Court's sole function under the statute is to determine whether there is substantial evidence to support the Commissioner's findings of no disability. The Commissioner's findings should stand if, after a review of the record in its entirety, the Court finds that the decision is supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Mullen v. Sec. of HHS*, 800 F.2d 535 (6th Cir. 1986); *Kirk v. Sec. of HHS*, 667 F.2d 524 (6th Cir. 1981), *cert. denied* 461 U.S. 957 (1983).

Upon a *de novo* review of the record, especially in light of plaintiff's objections, the Court finds that plaintiff's contentions have either been adequately addressed and properly disposed of by the Judge or present no particularized arguments that warrant specific responses by this Court. The Court finds that the Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Judge that the Commissioner's decision is supported by substantial evidence in the record.

Accordingly, the Court ADOPTS AND INCORPORATES BY REFERENCE HEREIN the Report and Recommendation of the United States Magistrate Judge and the final decision of the Commissioner denying plaintiff Disability Insurance Benefits and Supplemental Security Income benefits is hereby AFFIRMED. This case is TERMINATED on the docket of this Court.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court